
(2014) 03 AHC CK 0263

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 44112 of 2001

Saeed Ahmad Khan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2014) 4 ADJ 75 : (2014) 4 AWC 3894 : (2014) 3 ESC 1591 : (2014) 3 UPLBEC 2108

Hon'ble Judges : Rajesh Kumar Agrawal, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : Tarun Verma, Ravi Kant and Rohan Gupta, Advocate for the Appellant; A.K. Sinha and Arvind Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri Ravi Kant, learned Senior Advocate, assisted by Sri Rohan Gupta, learned counsel for the petitioners and learned Standing Counsel for the respondents.

The brief facts of the case, set up in the writ petition, are that petitioner No. 1 was initially appointed in Irrigation Department as a Junior Engineer on ad hoc basis in October, 1978 and was duly confirmed on the said post in 1995, petitioner No. 2 was initially appointed as a Junior Engineer in Rural Engineering Service Department at Bareilly and was confirmed in the said Department and petitioner No. 3 was initially appointed as a Senior Auditor in the office of District Audit Officer (Finance Department) at Deoria.

When a Minority Welfare Department was created, the State Government has issued a Government Order dated 22.11.1996 to the various Departments stating therein that the applications may be invited from the eligible candidates for the post of District Minority Welfare Officer on service transfer/deputation basis. The petitioners applied for the post of District Minority Welfare Officer

through proper channel. Letters dated 15.11.1997 were issued to them informing that they have been selected with the further direction to provide certain details so that the appointment letters may be issued. Thereafter, on 30.12.1997, the appointment letters have been issued, which is Annexure-4 to the writ petition. The appointment was temporary for a period of two years or till the further order, whichever is earlier on the basis of deputation/transfer of service basis. This appointment order has also been challenged in the writ petition. In pursuance of the aforesaid appointment letters, the petitioners have joined, after being relieved from their parent Department. The Government in exercise of power under the proviso to Article 309 of the Constitution, Uttar Pradesh Minority Welfare Department Gazetted Officers Service Rules, 2001 (hereinafter referred to as the ("Rules, 2001")) has been framed, which has been notified on 2.7.2001. Part-III of the Rules, 2001 provides procedure for the recruitment. Rule 5 of the Rules, 2001 provides that recruitment to the various cadres of posts in the service shall be made from following sources. In case of District Minority Welfare Officer, 75% post is to be filled by direct recruitment through the Commission and 25% by promotion through the Commission from amongst substantively appointed Chief Waqf Inspector and Senior Waqf Inspector, who have completed ten years service as Chief Waqf Inspector or Senior Waqf Inspector or both on the first day of the year of recruitment. This rule is being challenged in the present writ petition.

2. It appears that the petitioners have filed representation before the State Government for their absorption and regularization on the post of District Minority Welfare Officer in the Minority Welfare Department. The representation has been rejected vide order dated 2.8.2002, which is Annexure-7-B, and is being challenged in the writ petition. The representation has been rejected on the ground that the petitioners have been appointed as the District Minority Welfare Officer on deputation/transfer of service on temporary basis for a period of two years. The lien of their service continued with their parent Department. After the commencement of Rules, 2001, the feeding cadre is the Chief Waqf Inspector and Senior Waqf Inspector for the post of District Minority Welfare Officer. Rule 5 of the Rules, 2001 provides that 75% post of District Minority Welfare Officer is to be filled by direct recruitment through the Commission and 25% by promotion through the Commission from amongst substantively appointed Chief Waqf Inspector and Senior Waqf Inspector, There is no provision under the rule for any absorption.

3. Sri Ravi Kant, learned Senior Advocate, appearing on behalf of the petitioners submitted that he is not pressing relief No. a) by which the prayer for quashing the Uttar Pradesh Minority Welfare Department Gazetted Officers Service Rules, 2001, so far as it excludes the clause of merger/absorption on the post of District Minority Welfare Officer, is made. He submitted that on the invitation of the applications by the State Government, the petitioners applied for the post of District Minority Welfare Officer and after facing D.P.C., the petitioners have been selected and appointed on the post of District Minority Welfare Officer. After the

selection and appointment on the post of District Minority Welfare Officer, their lien in parent Department ceased and they became employees of the Minority Welfare Department and became entitled to be absorbed. The State Government has illegally rejected the claim of absorption/regularization of their service in the Minority Welfare Department by the order dated 2.8.2002.

4. Learned Standing Counsel submitted that the petitioners were appointed as the District Minority Welfare Officer, temporarily for a period of two years or until further order, whichever is earlier, on deputation/transfer of service basis. After the appointment on the post of District Minority Welfare Officer, their lien continued in their parent Department. There is nothing on record to suggest that their lien of service in the parent Department ceased. Under Rules, 2001, there is no provision for absorption in the Minority Welfare Department of the employees of other Departments. Under Rule 5 of the Rules, 2001, for the post of District Minority Welfare Officer, 75% post is to be filled by direct recruitment through the Commission and 25% by promotion through the Commission from amongst substantively appointed Chief Waqf Inspector and Senior Waqf Inspector. Thus, the feeding cadre for the post of District Minority Welfare Officer is the Chief Waqf Inspector and Senior Waqf Inspector and, therefore, the petitioners cannot be absorbed in the Minority Welfare Department and have to be repatriated to their parent Department. He submitted that the petitioners have also challenged the validity of the Government Order dated 30.12.1997, Annexure-4 to the writ petition, by way of amendment, by which the petitioners have been appointed as the District Minority Welfare Officer. If this appointment letter is being quashed, the entire claim of the petitioners" stand demolished.

5. We have considered rival submissions and perused the record.

6. There is no dispute that the petitioners have been appointed as the District Minority Welfare Officer vide appointment letter dated 30.12.1997 temporarily for a period of two years or till further order, whichever is earlier, on deputation/transfer of service basis. There is nothing on record to suggest that lien of service of the petitioners in their parent Department ceased and they have been absorbed in the Minority Welfare Department. The appointment/recruitment of District Minority Welfare Officer is to be governed by Rules, 2001. Rule 5 of the Rules, 2001, provides that for the post of District Minority Welfare Officer, 75% post is to be filled by direct recruitment through the Commission and 25% by promotion through the Commission from amongst substantively appointed Chief Waqf Inspector and Senior Waqf Inspector. Under the Rules, 2001, for the post of District Minority Welfare Officer, the feeding cadre is Chief Waqf Inspector and Senior Waqf Inspector. Therefore, the petitioners have no legal right to claim their absorption in the Minority Welfare Department and the same has rightly been refused by the State Government by the impugned order dated 2.8.2002.

7. The petitioners have also challenged the validity of the Government Order dated 30.12.1997, Annexure-4 to the writ petition, by way of amendment, by which the petitioners have been appointed as the District Minority Welfare Officer.

We do not see any reason that why the petitioners have challenged the said order. By this order, the petitioners have been appointed as the District Minority Welfare Officer. If this order is being quashed, the petitioners' entire claim will not survive.

8. It is a settled principle of law that the employees, who have been sent to other Department on deputation, have no right of absorption and they are to be repatriated to their parent Department at any time.

9. In the case of Kunal Nanda Vs. Union of India and Another, , the Apex Court has held that the employee who has been sent on deputation has no right to claim absorption.

10. In the case of U.P. Rajkiya Nirman Nigam v. P.K. Bhatnagar, 2007 (14) SCC 498, the Apex Court has held that mere fact that he has spent several years in service in the department where he has been sent on deputation will not alter the position from that of a deputationist to a regular employee.

11. In the case of Union of India (UOI) and Others Vs. S.A. Khailiq Pasha and Another , the Apex Court has held that the basic principal underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.

12. In the case of Ratilal B. Soni and others Vs. State of Gujarat and others, , the Apex Court has held that employee on deputation do not get any right to be absorbed on deputation post and can be reverted back to his parent department at any time.

13. Apex Court in the case of Union of India through Government of Pondicherry and another v. V. Ramakrishnan and others (Supra) was dealing with the case where before the expiry of period for which employee has been sent on deputation, the order of deputation has been cancelled. On these facts, the Apex Court held as follows:

Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a posthaste manner

also indicates malice.

A similar question arose before the Division Bench of this Court in Civil Misc. Writ Petition No. 44100 of 2013, Chandrabhan Srivastava and another v. State of U.P. and others. In the said case also, the employees appointed as the District Minority Welfare Officer temporarily on transfer of service basis on deputation claimed their absorption in the Minority Welfare Department. The Division Bench of this Court has held that the person sent on deputation in the Minority Welfare Department has no right of absorption and is liable to be repatriated at any time.

In view of the foregoing discussions, we do not find any merit in the writ petition. The writ petition is accordingly dismissed.